



IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

v.

ABBOTT LABORATORIES, INC.; et al.,

Defendants.

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CV 2005-219

**DEFENDANT IVAX PHARMACEUTICALS, INC.'S ANSWER TO SECOND
AMENDED COMPLAINT**

Defendant Ivax Pharmaceuticals, Inc. ("IPI"), for its answer to the State of Alabama's Second Amended Complaint ("Complaint") in the above-captioned action, by its undersigned counsel alleges upon knowledge as to itself and upon information and belief as to all other matters as follows:

INTRODUCTION¹

1. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph, and on that basis denies them.

2. IPI denies the allegations of this paragraph as they pertain to alleged conduct by IPI. In all other respects, IPI lacks sufficient information to either admit or deny the allegations of this paragraph, and on that basis denies them.

¹ Headings herein are reproduced from the Complaint. Their reproduction should not in any way be construed as an admission as to any subject matter or allegation contained therein. To the extent any heading in the Complaint is construed as an allegation of fact, such allegation is denied.

3. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

4. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

PARTIES

5. IPI admits that the State of Alabama is the named plaintiff in this action and that it purports to bring this action in its capacity as sovereign and on behalf of the Alabama Medicaid Agency. In all other respects, the allegations of this paragraph are denied.

6. IPI denies the allegations of this paragraph.

Defendant Abbott

7. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Alcon

8. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Allergan

9. This paragraph does not pertain to IPI and does not require a response from IPI.

The Alpha Defendants

10. This paragraph does not pertain to IPI and does not require a response from IPI.

11. This paragraph does not pertain to IPI and does not require a response from IPI.

12. This paragraph does not pertain to IPI and does not require a response from IPI.

The Amgen Defendants

13. This paragraph does not pertain to IPI and does not require a response from IPI.

14. This paragraph does not pertain to IPI and does not require a response from IPI.

15. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Andrx

16. This paragraph does not pertain to IPI and does not require a response from IPI.

The AstraZeneca Defendants

17. This paragraph does not pertain to IPI and does not require a response from IPI.

18. This paragraph does not pertain to IPI and does not require a response from IPI.

19. This paragraph does not pertain to IPI and does not require a response from IPI.

The Aventis Defendants

20. This paragraph does not pertain to IPI and does not require a response from IPI.

21. This paragraph does not pertain to IPI and does not require a response from IPI.

22. This paragraph does not pertain to IPI and does not require a response from IPI.

23. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Barr

24. This paragraph does not pertain to IPI and does not require a response from IPI.

The Baxter Defendants

25. This paragraph does not pertain to IPI and does not require a response from IPI.

26. This paragraph does not pertain to IPI and does not require a response from IPI.

27. This paragraph does not pertain to IPI and does not require a response from IPI.

The Bayer Defendants

28. This paragraph does not pertain to IPI and does not require a response from IPI.

29. This paragraph does not pertain to IPI and does not require a response from IPI.

30. This paragraph does not pertain to IPI and does not require a response from IPI.

31. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Biovail

32. This paragraph does not pertain to IPI and does not require a response from IPI.

The Boehringer Defendants

33. This paragraph does not pertain to IPI and does not require a response from IPI.

34. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Bristo-Myers Squibb

35. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant DEY

36. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Eisai

37. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Endo

38. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant ETHEX

39. This paragraph does not pertain to IPI and does not require a response from IPI.

The Forest Defendants

40. This paragraph does not pertain to IPI and does not require a response from IPI.

41. This paragraph does not pertain to IPI and does not require a response from IPI.

42. This paragraph does not pertain to IPI and does not require a response from IPI.

The Fujisawa Defendants

43. This paragraph does not pertain to IPI and does not require a response from IPI.

44. This paragraph does not pertain to IPI and does not require a response from IPI.

45. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Genzyme

46. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Gilead

47. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant GlaxoSmithKline

48. This paragraph does not pertain to IPI and does not require a response from IPI.

The Hoffman-LaRoche Defendants

49. This paragraph does not pertain to IPI and does not require a response from IPI.

50. This paragraph does not pertain to IPI and does not require a response from IPI.

51. This paragraph does not pertain to IPI and does not require a response from IPI.

The IVAX Defendants

52. IPI admits that at the time of the filing of the Complaint, Ivax Corporation was a Florida corporation with its principal place of business located at 4400 Biscayne Blvd., Miami, Florida 33137-3227.

53. IPI admits that at the time of the filing of the Complaint, IPI was a wholly-owned subsidiary of Ivax Corporation and was a Florida corporation with its principal place of business located at 4400 Biscayne Blvd., Miami, Florida 33137.

54. IPI admits that it engages in the business of manufacturing, distributing, marketing and/or selling prescription drugs. In all other respects the allegations of this paragraph are denied.

The J&J Defendants

55. This paragraph does not pertain to IPI and does not require a response from IPI.

56. This paragraph does not pertain to IPI and does not require a response from IPI.

The King Defendants

57. This paragraph does not pertain to IPI and does not require a response from IPI.

58. This paragraph does not pertain to IPI and does not require a response from IPI.

59. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant MedImmune

60. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Merck

61. This paragraph does not pertain to IPI and does not require a response from IPI.

The Mylan Defendants

62. This paragraph does not pertain to IPI and does not require a response from IPI.

63. This paragraph does not pertain to IPI and does not require a response from IPI.

64. This paragraph does not pertain to IPI and does not require a response from IPI.

65. This paragraph does not pertain to IPI and does not require a response from IPI.

The Novartis Defendants

66. This paragraph does not pertain to IPI and does not require a response from IPI.

67. This paragraph does not pertain to IPI and does not require a response from IPI.

68. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Novo Nordisk

69. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Organon

70. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Par

71. This paragraph does not pertain to IPI and does not require a response from IPI.

The Pfizer Defendants

72. This paragraph does not pertain to IPI and does not require a response from IPI.

73. This paragraph does not pertain to IPI and does not require a response from IPI.

74. This paragraph does not pertain to IPI and does not require a response from IPI.

75. This paragraph does not pertain to IPI and does not require a response from IPI.

76. This paragraph does not pertain to IPI and does not require a response from IPI.

77. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Purdue

78. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Sanofi

79. This paragraph does not pertain to IPI and does not require a response from IPI.

The Schering Defendants

80. This paragraph does not pertain to IPI and does not require a response from IPI.

81. This paragraph does not pertain to IPI and does not require a response from IPI.

82. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant TAP Pharmaceutical

83. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Takeda Pharmaceuticals

84. This paragraph does not pertain to IPI and does not require a response from IPI.

Defendant Teva

85. This paragraph does not pertain to IPI and does not require a response from IPI.

The Watson Defendants

86. This paragraph does not pertain to IPI and does not require a response from IPI.

87. This paragraph does not pertain to IPI and does not require a response from IPI.

88. This paragraph does not pertain to IPI and does not require a response from IPI.

89. This paragraph does not pertain to IPI and does not require a response from IPI.

The Wyeth Defendants

90. This paragraph does not pertain to IPI and does not require a response from IPI.

91. This paragraph does not pertain to IPI and does not require a response from IPI.

92. This paragraph does not pertain to IPI and does not require a response from IPI.

Fictitious Defendants

93. IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

94. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

JURISDICTION AND VENUE

95. IPI denies the allegations of this paragraph.

96. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

97. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

FACTUAL BACKGROUND

The Alabama Medicaid Program

98. IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

99. IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

100. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them. In all other respects, the allegations of this paragraph are denied.

101. IPI admits the allegations of this paragraph.

102. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them. In all other respects, the allegations of this paragraph are denied.

The Defendants' Reporting of Inflated Pricing Information

103. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

104. IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

105. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

106. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

107. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

Defendants' Marketing of the "Spread"

108. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

109. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

110. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

111. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

Other Lawsuits, Settlements, Government Investigations, and Criminal Proceedings

112. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

113. IPI admits that it is named as a defendant in an action styled *The City of New York v. Abbott Laboratories, Inc., et al.*. In all other respects, as it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

114. This paragraph does not pertain to IPI and does not appear to require a response from IPI. To the extent a response is required, as it may pertain to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

115. This paragraph does not pertain to IPI and does not appear to require a response from IPI. To the extent a response is required, as it may pertain to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

116. This paragraph does not pertain to IPI and does not appear to require a response from IPI. To the extent a response is required, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

117. This paragraph does not pertain to IPI and does not appear to require a response from IPI. To the extent a response is required, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

118. This paragraph does not pertain to IPI and does not appear to require a response from IPI. To the extent a response is required, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

119. This paragraph does not pertain to IPI and does not appear to require a response from IPI. To the extent a response is required, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

120. This paragraph does not pertain to IPI and does not appear to require a response from IPI. To the extent a response is required, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

121. This paragraph does not pertain to IPI and does not appear to require a response from IPI. To the extent a response is required, as it may pertain to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

122. This paragraph does not pertain to IPI and does not appear to require a response from IPI. To the extent a response is required, as it may pertain to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

123. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

124. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

125. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

126. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

CLAIMS

COUNT ONE – FRAUDULENT MISREPRESENTATIONS

127. IPI repeats and incorporates by reference its responses to numbered paragraphs 1 through 126.

128. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

129. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

130. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

COUNT TWO – FRAUDULENT SUPPRESSION

131. IPI repeats and incorporates by reference its responses to numbered paragraphs 1 through 130.

140[sic]. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

141. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

142. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

COUNT THREE – WANTONNESS

143. IPI repeats and incorporates by reference its responses to numbered paragraphs 1 through 142.

144. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

145. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

146. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

147. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

COUNT FOUR – UNJUST ENRICHMENT

148. IPI repeats and incorporates by reference its responses to numbered paragraphs 1 through 147.

149. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

150. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

151. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

152. As it pertains to IPI, the allegations of this paragraph are denied. With respect to other defendants, IPI lacks sufficient information to either admit or deny the allegations of this paragraph and on that basis denies them.

IPI further denies that plaintiffs are entitled to a judgment or any other relief as set forth in the section of the Complaint headed "Prayer for Relief." IPI denies that plaintiff is entitled to any relief in this action. Further, to the extent any allegation set forth in the Complaint are not expressly admitted, the allegations of the Complaint are denied.

ADDITIONAL DEFENSES

IPI alleges the following additional defenses to this matter. IPI does not undertake the burden of proof as to any defense or element as to which IPI does not bear the burden of proof.

FIRST ADDITIONAL DEFENSE

153. Plaintiff fails to state a claim against IPI upon which relief may be granted.

SECOND ADDITIONAL DEFENSE

154. Plaintiff's claims are barred, in whole or in part, because they require resolution of a nonjusticiable controversy.

THIRD ADDITIONAL DEFENSE

155. Plaintiff has no standing or capacity to bring some or all of the claims raised in this suit, including, without limitation, to the extent plaintiff claims status *in parens patriae*, to recover Medicaid or Medicare expenditures or to seek injunctive relief.

FOURTH ADDITIONAL DEFENSE

156. Plaintiff has not suffered, and will not suffer, any injury to a legally protected or cognizable interest by reason of the conduct of IPI alleged in the Complaint.

FIFTH ADDITIONAL DEFENSE

157. Plaintiff's claims are preempted in whole or in part by federal law.

SIXTH ADDITIONAL DEFENSE

158. Plaintiff's claims against IPI are barred, in whole or in part, by the applicable statutes of limitations and repose, and by the doctrines of unclean hands, laches, estoppel, and waiver.

SEVENTH ADDITIONAL DEFENSE

159. No statement or actions by IPI were the proximate cause or cause in fact of any injury to, or alleged loss by, plaintiff.

EIGHTH ADDITIONAL DEFENSE

160. Plaintiff fails to state with particularity facts to support the allegations of fraud in the Complaint.

NINTH ADDITIONAL DEFENSE

161. Plaintiff's claims against IPI are barred, in whole or in part, due to its failure to join indispensable parties.

TENTH ADDITIONAL DEFENSE

162. Plaintiff's claims are barred, in whole or in part, because any injuries allegedly sustained by plaintiff were the result of its own conduct or the intervening or superseding conduct of third parties.

ELEVENTH ADDITIONAL DEFENSE

163. Plaintiff's claims against IPI for damages are barred, in whole or in part: (1) because it failed to mitigate its damages; (2) because it would be unjustly enriched if allowed to recover any portion of the damages alleged in the Complaint; (3) by the doctrine of consent and/or ratification to the extent that plaintiff has continued to receive and pay for products allegedly sold by IPI after the filing of plaintiff's original Complaint; and (4) because they are speculative and remote and because of the impossibility of ascertaining and allocating those alleged damages.

TWELFTH ADDITIONAL DEFENSE

164. IPI is entitled to a set-off, should any damages be awarded against it, in an amount to be determined by the trier of fact.

THIRTEENTH ADDITIONAL DEFENSE

165. Plaintiff fails to allege facts or a cause of action against IPI sufficient to support a claim for attorneys' fees, enhanced damages, punitive damages, and/or legal fees or expenses.

FOURTEENTH ADDITIONAL DEFENSE

166. Some or all of plaintiff's claims against IPI are barred due to plaintiff's failure to comply with its federal and state statutory and regulatory obligations.

FIFTEENTH ADDITIONAL DEFENSE

167. Plaintiff's claims are barred by the failure to exhaust applicable administrative remedies.

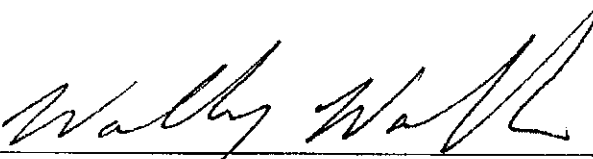
SIXTEENTH ADDITIONAL DEFENSE

168. IPI hereby gives notice that it intends to rely upon any other and additional defense that is now or may become available or appear during, or as a result of the discovery proceedings in this action and hereby reserves its right to amend its answer to assert such defense. IPI further adopts by reference any additional applicable defense alleged by any other defendant not otherwise alleged herein.

WHEREFORE defendant Ivax Pharmaceuticals, Inc. hereby respectfully demands as follows:

- a. The Complaint be dismissed in its entirety as to IPI.
- b. Plaintiff take nothing by is Complaint with respect to IPI.
- c. IPI be awarded its costs of defending this action, including its reasonable attorneys' fees; and
- d. IPI be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted,


George W. Walker, III (WAL097)

Counsel for Defendant Ivax Pharmaceuticals, Inc.

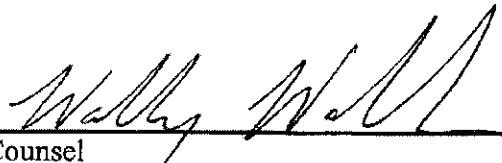
OF COUNSEL:

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Brian D. Ledahl, Esq.
IRELL & MANELLA LLP
1800 Avenue of the Stars
Suite 900
Los Angeles, CA 90067

CERTIFICATE OF SERVICE

I hereby certify that I have on this 30th day of January, 2006, electronically served a true and correct copy of the foregoing pleading on counsel of record by transmission to LNFS, pursuant to Case Management Order No. 2.



Of Counsel